

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

COMMON CAUSE NEW YORK, et al.

Plaintiffs,

-against-

BOARD OF ELECTIONS IN THE CITY OF  
NEW YORK, et al.

Defendants.

CV 16

6122

GARAUFIS, J.  
SCANLON, M.

**DECLARATION OF NEIL A. STEINER**

I, Neil A. Steiner, hereby declare as follows:

1. I represent Plaintiffs in the above-captioned action.
2. I submit this Declaration in support of Plaintiffs' Emergency Motion for a Preliminary Injunction.
3. Attached hereto as Exhibit A is a true and correct copy of the Declaration of Plaintiff Benjamin Buscher.
4. Attached to the Buscher Declaration as Exhibit 1 is a true and correct copy of an email Mr. Buscher received from Mr. Steven Richman, the General Counsel of the Board of Elections, on October 31, 2016.
5. Attached hereto as Exhibit B is a true and correct copy of the Declaration of Plaintiff Sean Hennessey.
6. Attached hereto as Exhibit C is a true and correct copy of the Declaration of Susan Lerner, Executive Director of Common Cause New York.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 3, 2016  
New York, NY

A handwritten signature in black ink, appearing to read 'Neil Steiner', written over a horizontal line.

Neil Steiner  
DECHERT LLP  
1095 Avenue of the Americas  
New York, NY 10036  
(212) 698-3822  
neil.steiner@dechert.com

*Attorney for Plaintiffs*

## DECLARATION

Pursuant to 28 U.S.C. § 1746, I, Benjamin Buscher, declare as follows:

1. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.
2. I am a permanent resident of New York State and New York City.
3. I moved to New York City in 2008. I have continuously been a resident of New York City since that time.
4. I registered to vote in New York City in 2008.
5. I voted in New York City in 2008.
6. I moved between various residences in New York City within the next six years.
7. Between 2008 and 2014, I voted multiple times at several different polling places. Whenever I voted at a new polling place in New York City, I informed the poll workers that I had changed my address and the poll worker allowed me to cast a ballot.
8. I distinctly recall voting in the November 2012 presidential election.
9. At the time of the November 2012 presidential election, I was registered at 15 Ann Street, New York, NY 10038.

10. In February 2014, I temporarily moved to Virginia to attend training related to my job at the United States Department of State. In September of 2014, I temporarily moved abroad for a two-year work assignment. I have nonetheless continuously maintained my New York City residency.

11. Currently, my permanent address is 1041 77<sup>th</sup> Street, Brooklyn, NY 11228. This has been my permanent address since 2014.

12. I will not be in New York City on November 8, 2016.

13. Believing that I was still registered to vote, I applied for an absentee ballot on October 3, 2016. When I applied for my absentee ballot, I used the 1041 77<sup>th</sup> Street address.

14. I never heard from the New York City Board of Elections or any other entity regarding my absentee ballot application.

15. Around October 19, 2016, I became concerned that I had not received an absentee ballot or any notice regarding the status of my application.

Accordingly, I made several phone calls to the New York City Board of Elections to inquire about the status of my ballot.

16. My attempts to obtain information regarding the status of my application were unsuccessful.

17. I believe I first tried to contact the Kings County Board of Elections because that is where I mailed the application. That office advised me to contact the New York City Board of Elections office in Manhattan.

18. I subsequently called the New York City Board of Elections office in Manhattan. An employee there informed me that my registration was not valid and that the deadline for registering for this election had passed.

19. The New York City Board of Elections employee transferred me to a local Board of Elections office and after several attempts, I reached a different employee who again stated my registration was not valid. When I explained the situation and asked what my options were, the individual essentially said nothing could be done because the registration deadline had passed.

20. I had not received notice that I had been placed on inactive status or that I had been removed from the New York voter registration list prior to October 19, 2016.

21. I called 866-OUR-VOTE on October 19, 2016, and told an Election Protection volunteer about my difficulties in obtaining an absentee ballot.

22. At my request, on October 31, 2016, a lawyer with the Lawyers' Committee for Civil Rights Under Law emailed Steven Richman, the General Counsel of the New York City Board of Elections, to inquire about

my absentee ballot application. I was copied and replied to the email. A true and correct copy of the email chain is attached hereto as Exhibit 1.

23. Mr. Richman responded in an email later that day. His email stated that I had been registered at 15 Ann Street in 2013, but had been placed on inactive status in May of 2014 because the U.S. Postal Service's National Change of Address provided a change of address to a residence in Virginia. Ex. 1. However, I never changed my permanent residence to that address.

24. Mr. Richman also stated that sometime after May 28, 2014, the New York City Board of Elections, "pursuant to the provisions of Section 5-402 of the New York State Election Law, having reason to believe that [I] may no longer be qualified to vote in New York City [moved residence outside the City of New York – see Election Law § 5-400(1)(a)] sent a Notice of Intent to Cancel to" me. Ex. 1. I have no recollection of receiving the notice referenced in Mr. Richman's email.

25. Mr. Richman concluded that, since I did not respond to that notice, my voter registration was cancelled by the New York City Board of Elections on August 5, 2014, and that I am not eligible to vote in the November 2016 election. Ex. 1.

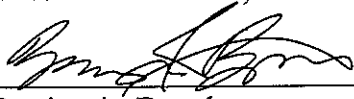
26. I will be in Scottsdale, Arizona, between Saturday, November 5, and Monday, November 7. An absentee ballot can be overnighted to me at the

W Scottsdale, Guest (Benjamin Buscher), 7277 East Camelback Road,  
Scottsdale, AZ 85251.

27. If I am emailed or overnighted an absentee ballot at the address listed above, I will fill it out immediately upon receipt. I will return it by email or overnight mail, whichever method is appropriate and fastest.

28. Since the voter registration deadline has passed, I cannot re-register in time to vote in the November 2016 election.

29. I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of November 2016, at Palm Springs, CA.

  
Benjamin Buscher

**John Powers**

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**From:** Steven H. Richman <srichman@boe.nyc.ny.us>  
**Sent:** Monday, October 31, 2016 4:18 PM  
**To:** Benjamin Buscher; John Powers  
**Cc:** \*Legal Department; Greg Lehman; William Anthony Allen MS MPA  
**Subject:** RE: [GRAYMAIL] Re: NYC voters Benjamin Buscher and Sean Hennessey

Gentlemen:

I am in receipt of your series of e-mails regarding Benjamin Buscher and Sean Hennessey. I have reviewed the relevant records of the Board of Elections in the City of New York concerning both Mr. Buscher and Mr. Hennessey. That review shows the following:

1. Both of these individuals were registered to vote in the City of New York, most recently from 15 Ann Street in the Borough of Manhattan in 2013.
2. On May 28, 2014, the Board received notification from the U.S. Postal Service, through the National Change of Address system of a change of address for both individuals from the Ann Street address to 901 North Nelson Street, Apt. 305, Arlington, VA 22203. Accordingly they were made inactive in the New York City Voter Registration System.
3. Thereafter, the Board of Elections, pursuant to the provisions of Section 5-402 of the New York State Election Law, having reason to believe that both of these individuals may no longer be qualified to vote in New York City [moved residence outside the City of New York – see Election Law § 5-400(1)(a)] sent a Notice of Intent to Cancel to each voter. There was no response to that notice.
4. On August 5, 2014, each of these individual's voter registration within the City of New York was cancelled, pursuant to the above cited provision of the NYS Election Law.

Therefore, neither Mr. Buscher nor Mr. Hennessey is registered to vote in the City of New York and is not eligible to receive an absentee ballot for the November 8, 2016 General Election. Please note that the statutory deadline for a person to register (or re-register) to vote in New York State and cast a ballot in the November 8, 2016 General Election (either as a resident voter or as a special federal voter) was Friday, October 14, 2016.

I regret that under the Election Law, the Board of Elections in the City of New York, as a ministerial agency, is bound by the specific deadlines and procedures established by the State of New York.

Very truly yours,

Steven H. Richman



General Counsel

**Steven H. Richman**

General Counsel  
OFFICE of the GENERAL COUNSEL  
TEL: 212-487-5338 x2462  
FAX: 212-487-5342  
srichman@boe.nyc.ny.us

**BOARD OF ELECTIONS IN THE CITY OF NEW YORK**  
EXECUTIVE OFFICE  
32 BROADWAY, 7th FLOOR  
NEW YORK, NEW YORK 10004



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**From:** Benjamin Buscher [REDACTED]  
**Sent:** Monday, October 31, 2016 2:45 PM  
**To:** John Powers  
**Cc:** \*Legal Department; Steven H. Richman  
**Subject:** [GRAYMAIL] Re: NYC voters Benjamin Buscher and Sean Hennessey

Thank you Mr. Powers. I just want to clarify one point. We are NYS residents but we do not physically live in NY because our work for the US Department of State requires us to live abroad. The address in Brooklyn is a home owned by my husband's family and is our official legal residential address, however, we do not physically reside in Brooklyn.

Thank you,  
Ben

Sent from my iPhone

On Oct 31, 2016, at 11:30 AM, John Powers <[jpowers@lawyerscommittee.org](mailto:jpowers@lawyerscommittee.org)> wrote:

Good afternoon Mr. Richman,

My name is John Powers, and I'm an attorney with the Lawyers' Committee for Civil Rights Under Law.

I wanted to inquire into the voter registration status of Benjamin Buscher and Sean Hennessey. Their applications for absentee ballots have been denied on the basis that they have been removed from the registration list. Based on their voting and residential history, however, we're concerned that they shouldn't have been removed.

Would you mind looking into their voter history and letting us know what happened and whether any options are available to Mr. Buscher and Mr. Hennessey? The attached document includes provides relevant background information that Mr. Buscher has given me permission to disclose, and I've copied him in case you need any additional details. We note that the deadline for applying for absentee ballots is approaching quickly, and would therefore appreciate a response as soon as possible.

Thanks for your assistance, John

John Powers  
Associate Counsel  
Voting Rights Project  
Lawyers' Committee for Civil Rights Under Law  
1401 New York Avenue NW, Suite 400  
Washington, DC 20005  
Telephone: (202) 662-8389  
General Fax: (202) 783-0857  
[jpowers@lawyerscommittee.org](mailto:jpowers@lawyerscommittee.org)

<image001.jpg>

*The information contained in this message from the Lawyers' Committee for Civil Rights Under Law and any attachments are confidential and intended only for the named recipient(s). If you have received this message in error, you are prohibited from copying, distributing or using the information. Please contact the sender immediately by return email and delete the original message.*

<Buscher and Hennessey Call Notes.pdf>

## DECLARATION

Pursuant to 28 U.S.C. § 1746, I, Sean Hennessey, declare as follows:

1. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.
2. I am a permanent resident of New York State and New York City.
3. I moved to New York City in 2006. I have continuously been a resident of New York City since that time.
4. I registered to vote in New York City in 2008.
5. I voted in New York City without incident in the November 2008 and 2012 elections.
6. I lived in Brooklyn from October 2006 until January 2009. At that time, I moved to Manhattan. From January 2009 through May 2014, I lived in two different apartments in the same voting precinct in Manhattan. At the time, I was registered at 15 Ann Street, New York, NY 10038.
7. My partner began a job at the U.S. Department of State in February 2014. My partner temporarily moved to Virginia in February of 2014 to attend a training program for this job. In May 2014, I temporarily moved to Virginia to join my partner.
8. In September 2014, my partner and I were sent abroad for his job. I have nonetheless continuously maintained my New York City residency.

9. Currently, my permanent address is 1041 77<sup>th</sup> Street, Brooklyn, NY 11228. This has been my permanent address since 2014.
10. I will not be in New York City on November 8, 2016.
11. Believing that I was still registered to vote, I applied for an absentee ballot on October 3, 2016. When I applied for my absentee ballot, I used the 1041 77<sup>th</sup> Street address.
12. I never heard from the New York City Board of Elections or any other entity regarding my absentee ballot application.
13. Around October 19, I became concerned that I had not received an absentee ballot or any notice regarding the status of my application. I called the New York County and Kings County election offices to inquire about the status of my ballot. Both told me that I was not registered to vote and that I had been removed from the voter rolls.
14. My attempts to obtain additional information regarding how I could vote were unsuccessful. Board of Elections employees said that they did not know anyone who could answer my question or, in one instance, hung up on me.
15. I had not received notice that I had been placed on inactive status or that I had been removed from the New York voter registration list prior to October 19, 2016.

16. I called 866-OUR-VOTE on October 19, 2016, and told an Election Protection volunteer about my difficulties in obtaining an absentee ballot.

17. At my request, on October 31, 2016, a lawyer with the Lawyers' Committee for Civil Rights Under Law emailed Steven Richman, the General Counsel of the New York City Board of Elections, to inquire about my absentee ballot application. A true and correct copy of this email is attached hereto as Exhibit 1.

18. Mr. Richman responded in an email later that day. His email stated that I had been registered at 15 Ann Street in 2013, but had been placed on inactive status in May of 2014 because the U.S. Postal Service's National Change of Address provided a change of address to a residence in Virginia. Ex. 1. However, I never changed my permanent residence to that address.

19. Mr. Richman also stated that sometime after May 28, 2014, the New York City Board of Elections, "pursuant to the provisions of Section 5-402 of the New York State Election Law, having reason to believe that [I] may no longer be qualified to vote in New York City [moved residence outside the City of New York – see Election Law § 5-400(1)(a)] sent a Notice of Intent to Cancel to" me. Ex. 1.

20. I never received the notice referenced in Mr. Richman's email. In fact, while I was on a three-way conference call with an Election Protection

volunteer and an employee at the New York Board of Elections, I was informed by the employee that a notification letter had been returned to the board of elections as undeliverable.

21. Mr. Richman concluded that, since I did not respond to that notice, my voter registration was cancelled by the New York City Board of Elections on August 5, 2014, and that I am not eligible to vote in the November 2016 election. Ex. 1.

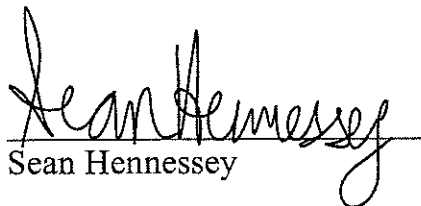
22. I will be in Scottsdale, Arizona, between Saturday, November 5, and Monday, November 7. An absentee ballot can be overnighted to me at the W Scottsdale, Guest (Sean Hennessey), 7277 East Camelback Road, Scottsdale, AZ 85251.

23. If I am emailed or overnighted an absentee ballot at the address listed above, I will fill it out immediately upon receipt. I will return it by email or overnight mail, whichever method is appropriate and fastest.

24. Since the voter registration deadline has passed, I cannot re-register in time to vote in the November 2016 election.

25. I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of November 2016, at

Palm Springs, California .

  
Sean Hennessey

DECLARATION OF SUSAN LERNER

Pursuant to 28 U.S.C. § 1746, I, Susan Lerner declare as follows:

1. I am the Executive Director of Common Cause/New York. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.

2. Common Cause/New York is the statewide New York chapter of Common Cause, a nationwide non-partisan 501(c)(4) organization. Common Cause/New York's principal place of business located in New York, New York.

3. Common Cause/New York has more than 20,000 activists and members in New York City out of a total of more than 40,000 activists and members statewide.

4. Voting rights and election reform is central to Common Cause/New York's mission promoting open, honest and accountable government that serves the public interest, and empowering ordinary people to make their voices heard in the political process. Ensuring that our elections are accessible, well administered and fair is part of our core mission to promote civic engagement and accountability in government.

5. Common Cause/New York has committed, and continues to commit, time and resources to advocating for reforms that improve election administration in New York City and New York state, monitoring polling places on Election Day, documenting and analyzing voters' problems at the polling place, conducting voter registration efforts, facilitating a coalition of groups that work on election administration and reform, issuing reports and recommendations for the reform of New York election law and election administration practices.

6. Common Cause/New York has traditionally spent a considerable amount of time and resources directed to voter registration efforts, and the organization has conducted voter registration drives in New York City that have resulted in hundreds of new registrants this year.

7. For many years, Common Cause/New York has assisted voters who are confused about their inactive status and have been adversely impacted by the New York City Board of Elections' list maintenance procedures.

8. In 2016, Common Cause/New York assisted many voters who have been improperly purged from voter rolls and advocated on their behalf to the New York City Board of Elections.

9. In 2016, Common Cause/New York has assisted voters who believe they should be registered but not appeared on the voter rolls at the polling place.

10. Common Cause/New York has devoted significant resources to addressing the concerns about New York City Board of Elections' list maintenance procedures, including assisting individual voters, testifying at hearings, conducting press conferences, and discussing the issue with New York City Board of Elections staff.

11. As a result, Common Cause/New York diverted resources from its efforts to register and mobilize voters in order to assist voters who have been improperly purged from the voter rolls.


12. The New York City Board of Elections' premature removal of voters in violation of Section 8 of the National Voter Registration Act hampers Common Cause/New York's voter registration and voter protection efforts. It also frustrates attempts by voters



registered or assisted by Common Cause/New York, as well as New York City voters generally, to vote in elections, such as the one occurring on November 8, 2016.

13. Common Cause/New York therefore respectfully requests that the Court allow voters who have been improperly purged from the New York registration list to vote in the November 8, 2016 election, and to enjoin the premature removal of New York voters from the registration list in violation of Section 8 of the NVRA.

14. I declare under penalty of perjury that the foregoing is true and correct. Executed this 3<sup>rd</sup> day of November 2016, at New York, New York.

  
Susan Lerner